

63

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 582 of 2013.

Date of hearing	Order with signature of Judge
23.05.2014.	

1. For orders on office objection.
2. For hearing.

Mr. Nadeem Ahmed Qureshi, Advocate for applicant.
Mr. Muhammad Hashim Soomro, Advocate complainant.
Mrs. Seema Imtiaz, A.P.G.

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Through instant bail application applicant Faizal alias Faiz Muhammad Burdi (Buledi), seeks post arrest bail in Crime No.101/2013 of P.S Hyderi, Larkana, under Sections 302, 324, 504, 148, 149 P.P.C.

2. Precisely, relevant facts are that, it is alleged that applicant associated with other assailants waylaid the complainant party at Zulfiqar Bagh Road near railway crossing, where co-accused Sudheer caused firearm injury to Seengar Ali, whereas accused Juman caused firearm injuries to Ali Sher which received to him on groin; thereafter other accused persons including applicant caused straight fires upon complainant and other witnesses but they saved their lives by taking shelter of the bank of railway crossing. Both injured succumbed to their injuries, thus complainant lodged F.I.R. During investigation, accused Sudheer was arrested, accused Buxial was found innocent and his name was placed in column No. 2 whereas accused Juman, the brother of applicant remained fugitive from law. Consequently, challan was submitted and all nominated accused were arraigned.

3. Learned counsel for the applicant inter-alia, contends that no specific allegation is attributed to the applicant by complainant as well as witnesses in their statements recorded under Section 161 Cr.P.C; complainant has attempted to wide the net of false implication in order to implicate all family members in instant case; on similar role accused Buxial during investigation was found innocent and his name was placed in column No.II of the challan sheet. In support of his contentions learned counsel has relied upon 1999 SCMR 1360, 1999 SCMR 1320 and 1998 SCMR 454.



65

4. Conversely, learned Advocate for complainant while refuting the above contentions has argued that this is not a case of sudden flair up between the parties; complainant party is resident of district Kamber-Shahdadkot and for their personal work they came in Larkana, while they were returning back to their native place, meanwhile, over property dispute, they were waylaid by accused persons, armed with deadly weapons including applicant and caused murder of two persons, therefore, instant case is pre planned murder case, hence applicant is not entitled for bail. In support of his contentions, he has relied upon 1997 P.Cr.L.J 101, 2006 P.Cr.L.J. 1984, 2011 MLD 1171, 2014 P.Cr.L.J 630.

5. On the other hand learned A.P.G. also endorsed the arguments of complainant's counsel and further contended that all the prosecution witnesses have supported the version of F.I.R; name of applicant transpires in report, therefore, applicant does not deserve the concession of bail.


6. After careful consideration of contentions raised by counsel for respective parties and meticulous examination of available record. Suffice to say that, in cases where only an allegation of ineffective firing is alleged and presence of accused persons at the place of incident is justified, in those cases normally Courts have dealt the bail applications with lenient view, but when it is surfaced that the place of incident is not the same area where accused party resides, and sufficient evidence is collected to connect the applicant in case of capital punishment, in such situation, it is the responsibility of the court to decide the fate of bail application with great caution and care. Here it is matter of record that complainant party is resident of District Kamber, while proceeding to their village from Larkana, was intercepted by the accused persons including applicant, armed with deadly weapons, assaulted upon complainant party whereby two persons lost their lives; incident is day time; thus there is no possibility of mistaken identity; FIR, was lodged promptly. Under the given circumstances prima-facie, it appears that instant case relates to the pre-planned murders; applicant has participated in instant crime and has facilitated the other assailants.

7. Regarding case law relied upon by learned counsel for applicant, it is settled principle of law that in criminal jurisprudence each and every case is to be decided on its own peculiar facts and circumstances, however, principles

id down can be observed and considered. Keeping in view that analogy, have examined the all cases, which apparently are not helpful to the applicant, especially when one brother of applicant is yet absconding, who is allegedly, have caused murder of Ali Sher. At this stage, with regard to the plea of applicant that on same allegation accused Buxial was found innocent and his name was placed in column No.II, it is surfaced that during investigation police opined in favour of that accused on the basis of evidence collected during investigation whereas, present applicant was shown absconder in the challan. Moreover it is settled principle of law that ipsi dixit of police is not binding upon Courts while deciding the bail applications.

In view of given circumstances, applicant has failed to bring his case within the purview of subsection (2) of Section 497 Cr.P.C; hence instant bail application is dismissed.

Needless, to mention that observations assigned hereinabove are tentative in nature and will not prejudice the case of either party at trial.

  
Judge 23/5/2024

Ansari.